THIS AGREEMENT made and entered into by and between King County, Washington, a Municipal Corporation, hereinafter called the "County," and the City of Redmond, hereinafter called the "City."

WITNESSETH

WHEREAS, the County proposes to proceed with the design and construction of NE Novelty Hill Road – Phase I, hereinafter referred to as the "Project;" and

WHEREAS, the City provides sewer service in the general area of the Project in accord with applicable Washington State and King County laws, regulations, and franchises; and

WHEREAS, the County and the City can achieve cost savings and benefits in the public's interest by performing certain work for the City during construction of the Project, namely the sewer line modifications and replacements and the adjustments of sewer manholes and appurtenances within the project area, hereinafter referred to as the "Utility Work". The Scope of Work and Cost Estimate for the Utility Work are attached as Exhibit "A".

NOW, THEREFORE, it is hereby covenanted and agreed by and between the parties hereto as follows:

DESIGN

A. The City shall, prior to the County advertising the Contract Bid Documents for the Project, furnish complete and reproducible construction drawings, special contract provisions and other necessary documents for the Utility Work, to become a part of the County plans and specifications for the Project. The County shall notify the City of any changes, which must be made to these documents to bring them into conformance with County requirements. The City shall provide all required changes to the documents prior to King County's advertisement of the Project. The City's failure to provide the data, documentation, or information as required by this Section may cause the County to delete the Utility Work from the Plans and Specifications for the Project.

II. BIDDING

- A. The County shall incorporate a complete and final set of the City's Plans and Specifications for the Utility Work into the Contract Bid Documents as a deductive alternate in such manner as to allow, to the extent possible, identification of cost allocations between the parties.
- B. The County shall furnish the City with the bid prices for the Utility Work for the City's approval. Within two weeks of receiving the bid prices, the City shall notify the

County in writing that the City either approves or rejects their portion of the contract. The County shall not proceed with the Utility Work until the County has received approval from the City. If bids are received which, in the estimation of the City, are not acceptable for the City's portion, all or a portion of the Utility Work shall be deleted from the contract. Bid awards shall be made to the lowest responsible bidder for the total project, subject to applicable laws and regulations.

C. If the City rejects the County's lowest responsible bid, the City may select its own contractor to do the Utility Work deemed necessary. In this case, the City shall require its contractor to coordinate all utility work located at the project site with the County's contractor, without unreasonably interfering with or delaying the County's contractor. The City shall notify its contractor of such requirement, and shall provide written notice to the County and the County's contractor ten days prior to beginning Utility Work on site. If the contractor selected by the City unreasonably delays or impacts the County's contractor, the City agrees to defend, indemnify, and hold King County harmless from and against any such unreasonable delay or impact if a claim is presented by the County's contractor, provided the County shall give the City prompt notice of any potential claim as soon as the County has received knowledge thereof.

III. CONTRACT ADMINISTRATION

- A. The County shall provide the engineering, administrative, inspection, and clerical services necessary for the execution of the Utility Work. In providing such services, the County Engineer may exercise all the powers and perform all the duties vested by law in him.
- B. The City shall furnish an inspector to verify proper compliance with requirements in the contract Plans and Specifications while the Contractor is doing the Utility Work. The Utility's inspector shall perform all usual inspection tasks such as the preparation of the following contract documents: Inspector's Daily Reports, Field Note Records, Force Account Work Sheets, Item Quantity Tickets, Construction Record Drawings, etc. on all the Utility Work. The City inspector shall have the limited authority to communicate with the Contractor on matters regarding contract performance of the Utility Work, provided the City's inspector shall advise the County of any deficiencies in the Utility Work. The City inspector shall have no authority to bind the County to any adjustments in contract time or price for the Project. The County reserves the right to remove the City's inspector from the project for unsatisfactory performance of his or her duties. The City shall promptly replace such inspector at the County's request.
- C. The City shall notify the County, in writing, of any changes it wishes to make in the Plans and Specifications that affect the Utility Work, which changes shall be made, if feasible. The City shall promptly provide the County with written documentation describing the requested change(s). The County will notify the City of any changes required by the County, which substantially change the nature of the Utility Work and shall obtain the City's approval of such changes, with such approval not being

unreasonably withheld by the City. Written notification by the County shall be given to the Utility prior to the commencement of the work. This Agreement shall be amended in writing to incorporate changes in the Scope of Work or Cost Estimate. Any and all costs related to the change(s) in Utility Work, including but not limited to, the County's internal administrative costs and the costs associated with any delays or impacts to the County's contractor, shall be borne by the party proposing the change(s).

- D. The County shall provide the City with written notice of physical completion of the Utility Work. Upon such notice the City's inspector shall perform final inspection of the Utility Work. The City shall, within seventy-two (72) hours of its final inspection, provide to the County acceptance of the Utility Work, or alternatively, provide an itemized and detailed response as to why acceptance of the Utility Work cannot be given. If the City fails to respond to the County, the City will be deemed to have given final acceptance of the Utility Work within ten (10) calendar days of the City's receipt of the notice of physical completion of the Utility Work from the County. Upon the City's acceptance of the Utility Work, the County shall be relieved of any and all responsibility and/or liability for the Utility Work and the condition of the City facilities, provided, however, the County shall assign to the Utility all of the material warranties as defined in section 1-05.10 of the 2008 Standard Specifications for Road, Bridge and Municipal Construction under the Project contract as to the Utility Work.
- E. The City shall prepare their own set of record drawings for the Utility Work performed on the Project. The City may also request in writing a copy of the record drawings prepared by or for the County on the Project. The location of all surface features associated with the City's sewer facilities shall be field-surveyed by the City's surveyor. Any surveying work done for the City shall be done at their own expense.

IV. PAYMENT

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- A. The City shall reimburse the County for all costs reasonably incurred by the County in performing the utility work, which costs shall include but not be limited to:
 - 1. The contract price, as adjusted by change orders agreed to in writing by the City, to perform the Utility Work; and
 - 2. The County's internal costs incurred during construction of the project (<u>i.e.</u>, all engineering, clerical, administrative, materials testing, surveying, and inspection services costs and all payroll additives) directly attributable to the Utility Work.
- B. In the event the County's contractor uncovers any materials while doing work solely related to completion of the Utility Work agreed upon requiring special handling and/or disposal under any local, state or federal laws or regulations (including, but not limited to, hazardous waste, dangerous waste, toxic waste or contaminated soil) the City will be responsible for all costs incurred in handling and/or disposing of such materials.

C. All payments shall be due within 30 days from the date the County invoices the City for Utility Work performed on the Project, and when due shall accrue simple interest at the rate of one percent per month.

V. INDEMNIFICATION AND HOLD HARMLESS

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- A. Each Party hereto agrees to protect, defend and indemnify the other Party, its officers, officials, employees and agents from any and all costs, claims, claims for delay, judgments and/or awards of damages, arising out of or in any way resulting from the Party's default, failure of performance, or negligent conduct associated with this Agreement, by the Party, its employees, subcontractors or agents.
- B. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the other Party's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- C. Claims shall include, but not be limited to, defects or mistakes in plans, specifications and/or drawings, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.
- D. In the event either Party incurs any costs including attorney fees to enforce the provisions of this article and prevails in such enforcement action all such costs and fees shall be recoverable from the losing Party.
- E. The provisions of this section shall survive the expiration or earlier termination of this Agreement with regard to any event that occurred prior to or on the date of such expiration or earlier termination.

VI. TERMINATION

A. If a party fails to comply with any material provision(s) of this Agreement the other party may terminate this Agreement, in whole or in part, for default upon thirty (30) days written notice to the defaulting party. Any extra costs, expenses or damages incurred by the non-defaulting as a result of the termination for default shall be borne exclusively by the party in default. The rights and remedies of this provision are in addition to any other rights or remedies provided to the non-defaulting party by law or under this Agreement. Any termination of this Agreement for default shall not relieve the defaulting party of any obligation, which may arise out of work already performed prior to such termination.

B. The City's failure to secure all necessary funding to complete the Utility Work for the Project will constitute a failure to comply with the material provisions of this Agreement, in accordance with the termination provisions set forth above.

VII. OTHER PROVISIONS

- A. The County shall retain ownership and usual maintenance responsibility for the road and sidewalk. The City shall retain the rights of exclusive use, regulation, and control of the completed "Utility Work" and full ownership of such Utility Work, including but not limited to, the right to sell, transfer, or assign its rights to any partial interest, subject to the City franchise from King County. The City shall also assume full financial responsibility for conforming to all permit and other regulatory requirements or legal obligations relating to the Utility Work, which arise or take effect on or subsequent to the physical completion of the Project.
- B. This Agreement contains the entire written agreement of the parties and supersedes all prior discussions. This Agreement may be amended only in writing, signed by the authorized representative(s) for each party.
- C. Nothing contained herein is intended to, nor shall be construed to, create any rights in any third party, or to form the basis for any liability on the part of the parties to this Agreement, or their officials, officers, employees, agents or representatives, to any third party.
- D. Waiver of any default or breach of this Agreement shall not be deemed to be a waiver of any other prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written agreement of both parties.
- E. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect if such remainder would then continue to serve the purposes and objectives of the parties.
- F. Each party shall maintain records that accurately reflect all actions taken and services provided pursuant to this Agreement, and all direct and indirect costs incurred in the performance of this Agreement. Such records and documents shall be subject to inspection, review or audit by King County, the City and/or federal/state and local officials so authorized by law, at the requesting party's sole expense. Such records shall be made available for inspection or audit during the record keeper's regular business hours within a reasonable time after the record keeper's receipt of a request for inspection of the same. These rights and obligations shall exist during the performance of the Agreement and continue for six (6) years after the termination or natural expiration of the Agreement, whichever first occurs.
- G. In the event of a contractual dispute between the Parties regarding this Agreement, the Parties shall attempt to resolve the matter informally. If the Parties are unable to resolve the matter informally, the matter shall be forwarded for discussions to the General Manager of the City and the Director of King County's Department of

Transportation, or their respective designee(s). If this process fails to resolve the dispute within thirty (30) days after such referral, a party may pursue any legal remedy available or the Parties may agree to submit the matter to mediation or other alternate dispute resolution. If the Parties submit the matter to alternate dispute resolution and the matter is not resolved, a party shall be entitled to pursue any legal remedy available in a court of law.

H. In the event that either party deems it necessary to institute legal actions or proceedings to enforce any right or obligation under this Agreement, the parties hereto agree that any such action shall be initiated in King County Superior Court of the State of Washington. This Agreement shall be interpreted and construed in accordance with the laws of the State of Washington. The City hereby consents to the personal jurisdiction of the King County Superior Court of the State of Washington.

VIII. INDEMNIFICATION OF CITY AND INSURANCE

- A. The County shall require the contractor building the Project to have the City named as an additional insured on all policies of insurance to be maintained by contractor(s) under the terms of any Project contract(s), with the County contractor building the Project required to maintain Commercial General Liability Insurance, Commercial Automobile Insurance and Workers Compensation.
- B. The County shall require the contractor building the Project to indemnify, defend, and save harmless the City and its officers, agents, or employees from any claim, real or imaginary, filed against the City or its officers, agents, or employees alleging damage or injury arising out of the contractor's participation in the Project.
- C. The County shall contractually require the contractor building the Project to be solely and completely responsible for safety and safety conditions at the job site, including the safety of all persons and property during performance of the work. The contractor shall be contractually required to comply with all applicable County and State regulations, ordinances, orders, and codes regarding safety.

IN CONSIDERATION of the mutual benefit accruing herein, the parties hereto agree that the work as set forth herein will be performed by the County under the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date last written below.

KING COUNTY, WASHINGTON	CITY OF REDMOND
Director, D.O.T. Road Services	Mayor Marchine
Linda Dougherty Name (print)	Name (print)
March 3, 2010 Date	/0/12/69 Date
	Attested By: City Clerk
APPROVED AS TO FORM	APPROVED AS TO FORM
Deputy Prosecuting Attorney	City Attorney

STD ITEM NO.	UNIT OF MEASURE	WORK ITEM	NO. OF UNITS	UNIT COST	TOTAL COST
(REBUILD S	EWER BETV	VEEN MH812 AND MH818)			
7005	CY	STRUCTURE EXCAVATION, CL B	250	\$10.00	\$2,500
7007	SF	SHORING OR EXTRA EXCAVATION TRENCH	1500	\$5.00	\$7,500
7364	EACH	MANHOLE 60-INCH DIAMETER, TYPE 1	1	\$5,000	\$5,000
7372	LF	MANHOLE ADDITIONAL HEIGHT 60 IN. DIAM. TYPE	23	\$500	\$11,500
9605	EACH	CONNECTION TO EXISTING MANHOLE	1	\$3,000	\$3,000
3776	LF	DUCTILE IRON SEWER PIPE 18-INCH DIAMETER	90	\$115	\$10,350
3152	LF	TESTING SEWER PIPE	110	\$10.00	\$1,100
7029	EACH	PLUGGING EXISTING PIPE	2	\$400	\$800
7345	EACH	ABANDON EXISTING MANHOLE	2	\$1,500	\$3,000
3810	CY	REMOVAL AND REPLACEMENT OF UNSUITABLE MATERIAL	0	\$40.00	\$0

Subtotal

\$44,750

(INSTALL PARK SEWER STUB)

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7005	ÇY	STRUCTURE EXCAVATION, CL B	200	\$10.00	\$2,000
7007	SF	SHORING OR EXTRA EXCAVATION TRENCH	1315	\$2.50	\$3,288
7360	EACH	MANHOLE 48-INCH DIAMETER, TYPE 1	1	\$3,650	\$3,650
7369	LF	MANHOLE ADDITIONAL HEIGHT 48 IN. DIAM. TYPE	9	\$200	\$1,800
9605	EACH	CONNECTION TO EXISTING MANHOLE	1	\$1,200	\$1,200
3772	LF	DUCTILE IRON SEWER PIPE 8-INCH DIAMETER	75	\$200.00	\$15,000
3152	LF	TESTING SEWER PIPE	75	\$10.00	\$750
3810	CY	REMOVAL AND REPLACEMENT OF UNSUITABLE MATERIAL	100	\$40.00	\$4,000

Subtotal

\$31,688

(ADJUST MANHOLES TO NEW GRADE)

VIBOUCH WAITHOUSE TO THE VIGIBLE					
special	EA	ADJUST SANITARY SEWER MANHOLE, MINOR	7	\$400	\$2,800
special	EA	ADJUST SANITARY SEWER MANHOLE, MAJOR	24	\$4,500	\$108,000

Subtotal

\$110,800

TOTAL =

\$187,238

King County Forces @ 20%

37,447

Total Cost

224,685

The purpose of the Eximbit A is to provide labor and material estimates for the project. Reimbursement to King County will be based solely upon the actual costs which have occurred on the project